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PROBLEMS WITH THE PROPOSED DISTRICT 11 STUDENT PUBLICATION POLICY (DRAFT DATED DECEMBER 11, 1996)

By William Mohrman, member of the Board of Directors of PPHRC

The draft District 11 student publication policy dated December 11, 1996 is in many ways an improvement over the draft policy that was circulated in November. There are still a number of serious problems with the draft policy that need to be addressed before it is adopted.

FIRST, THE CONTEXT OF THE PROPOSED POLICY REVISION: The proposed new student publication policy cannot be viewed in isolation from the factors that gave initially rise to decision to review that policy--i.e., the views expressed by School Board Chairman Kent Olvey, Colorado for Family Values Chairman Will Perkins, and others that it was "inappropriate" for the Palmer High School student newspaper, the Lever, to publish an article on the difficulties of being a gay teenager. As a result of this background, it will inevitably appear that the purpose of the new policy is to discourage or even prevent the future publication of similar types of articles. The School Board could alleviate this problem by explicitly adopting a statement that it does not believe the Lever article entitled "Finding true love" was inappropriate and that the revision of the student publication policy is not intended in any way to discourage the publication of similar types of articles on "controversial/sensitive" subjects.

SECOND, THE FAILURE OF THE PROPOSED POLICY STATEMENT TO INCORPORATED THE GUARANTEE OF FREEDOM OF THE PRESS PROVIDED BY STATE LAW: Although the proposed policy incorporates certain elements of the applicable state law (C.R.S. 22-1-120), there is a glaring omission. The proposed policy does not reaffirm the opening statement of section 22-1-120 that ""*students of the public schools shall have the right to exercise freedom of speech and of the press, and no expression contained in a student publication . . . shall be subject to prior restraint* except for the types of expression described in subsection (3)" [emphasis added]. Subsection (3)deals only with "[e]xpression which is obscene; . . . which is libelous, slanderous, or defamatory under state law; . . . which is false as to any person who is not a public figure or involved in matter of public concern; or . . . which creates a clear and present danger of the commission of unlawful acts, the violation of lawful school regulations, or the material or substantial disruption of the orderly operation of the school or which violates the rights of others to privacy." An

apparent explanation for this omission is that the school board does not want to encourage, and perhaps wants to discourage, the exercise by students of their rights to freedom of speech and freedom of the press.

THIRD, THE INCLUSION IN THE PROPOSED POLICY OF STATEMENTS APPARENTLY DESIGNED TO DISCOURAGE THE EXERCISE OF FREEDOM OF SPEECH AND THE PRESS: The proposed policy includes several statements that appear to be designed to discourage freedom of speech and freedom of the press.

First, the proposed policy requires any student who desires to distribute a student publication "shall submit such student publication to the building principal or designee for review and approval prior to such distribution". This requirement applies not only to "school sponsored" publication such as newspapers and yearbooks, but also to all other "student publications."

Second, the draft policy declares that the "Board of Education does not intend by this policy to create an open public forum within the schools." Unless it is designed to discourage the free and open discussion of issues by students, it is difficult to determine the purpose of this declaration. The declaration appears to contravene the statement of state law (C.R.S. 22-1-120(2)) that [i]f a publication written substantially by students is made generally available throughout a public school, it *shall be a public forum* for students of such school" [emphasis added].

Third, the guarantee (established by state law) that student editors "shall be responsible for determining the news, opinion, and advertising content of their publications," is immediately followed by declarations that this guarantee is "subject to the limitations of this policy" and that "[s]tudent editors are encouraged to exercise restraint, responsibility, and reasonable balance in discussions on controversial/sensitive issues consistent with the District's policies . . . ." Perhaps in the abstract the call for restraint, responsibility, and balance would appear reasonable. In the context of the controversy over the Lever article, however, it is difficult to read these policies as being anything less than efforts to encourage student editors to avoid "controversial/sensitive" subjects, such as homosexuality. The means by which student editors are "encouraged" to exercise restraint is left ambiguous.

FOURTH, THE APPLICATION OF VARIOUS REQUIREMENTS TO "PUBLICATIONS" THAT ARE NOT "SCHOOL-SPONSORED PUBLICATIONS": It is important to realize that only one paragraph of the draft policy applies to "school-sponsored" publications such as newpapers and yearbooks. The other elements of the policy apply to the "distribution" of any "student publication."

A number of requirements apply to the "distribution" of a "student publication." Most significant of these is the requirement that any student who desires to distribute a student publication "shall submit such student publication to the building principal or designee for review and approval prior to such distribution." In addition, according to the draft policy all "student publications" mustl contain a specified disclaimer that the publication shall not be deemed an expression of the views or policies of School District 11 or the relevant school. (Ironically, this latter requirement seems somewhat inconsistent with the former requirement for "review and approval.")

"Student publication" and "distribution" are defined terms in the draft policy. These definitions are

not found in the state law governing student publications. The definitions of "student publication" and "distribution" established in the draft policy appear to be overly broad. One hopes that this is the result of inadvertent drafting errors that will be corrected before the policy is adopted by the school board.

According to the definitions in the proposed policy, a "student publication" includes "any book, magazine, pamphlet, *newspaper*, yearbook, *picture, photograph, drawing or any textual or visual representation, however produced*, which is composed, compiled, published, or *distributed* by students" [emphasis added]. Apparently a "student publication" does not have to be produced by students! It only needs to be distributed by students in order to become subject to the requirements of the draft policy. Is the sports section of the Gazette Telegraph covered by this definition? The Colorado Christian News? The Ground Zero News? It seems absurd, but taken literally, the definition of "student publication" appears to include classroom materials prepared by the teacher that are "distributed" by one student to other students in the class, menus from Bueggers Bagels, the schedule for school sports teams, information about extracurricular activities, and an album of photos from a class trip.

The definition of "distribution" includes "circulation or dissemination" by such means as "handing our free copies; . . . making copies available (such as by placing them in a common area); . . . displaying copies; transmitting the publication electronically" (the latter appears to include e-mail).

In conclusion, there are a number of problems with the District 11's draft policy on student publication. Most of these problems are easy to fix if the school board is genuinely interested in adopting a policy that is consistent with state law, that demonstrates a commitment to the freedom of inquiry that should be central to the educational experience, and that does not discourage students from exploring (in a responsible manner) "controversial" subjects, especially articles such as the "Finding true love" article that attempted to honestly educate students about the world that in fact exists around them.